

STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No. 09-AFC-4
for the Oakley Generating Station)
Project)
-----)

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
HEARING ROOM B
SACRAMENTO, CALIFORNIA

TUESDAY, MARCH 1, 2011

1:37 P.M.

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APPEARANCES

HEARING OFFICER

Kourtney Vaccaro

COMMITTEE MEMBERS

Jim Boyd, Presiding Member

Susan J. Brown, Advisor to Commissioner Boyd

Eileen Allen, Advisory to Commissioner Weisenmiller

COMMISSIONERS

Carla Peterman

STAFF

Kevin Bell, Senior Staff Counsel

Pierre Martinez, CEC Project Manager

PUBLIC ADVISOR

Jennifer Jennings, Public Advisor

Lynn Sadler, Deputy Public Advisor

APPLICANT

Scott Galati, Esq.
Galati Blek

Greg Lamberg, Radback Energy

Doug Davies, CH2MHill

APPEARANCES (Continued)

INTERVENORS

Robert Sarvey

ALSO PRESENT

Cathy Jones, Pacific, Gas & Electric

Danae Parrish, Pacific, Gas & Electric

Maifiny Vang, California Department of Water Resources

Rebecca Willis, City of Oakley

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PROCEEDINGS

PRESIDING MEMBER BOYD: I'm Jim Boyd the Vice Chair of the Commission and the Presiding Member of the Oakley Generating Station project. This is a status conference, but I want to mention and welcome Commissioner Carla Peterman, who was sworn in at 9 o'clock this morning. She is auditing this case today, because she hasn't been officially named via -- through our process to be the second Commissioner on this case.

But as soon as we go through the procedures formally at our next business meeting, I presume she will formally replace Commissioner Weisenmiller who's been giving up the duties as required of late. She'll formally replace him as the second member of this Committee, so she's going to get a running start -- or she is getting a running start. She's already sat through a briefing. She's going to sit through today. So I welcome her, and just wanted to explain to you her current and future status with regard to this case.

So with that, let me go back to commenting on the fact that this is a status conference, and it's being operated by the -- or conducted by the Oakley Generating Station Committee -- pardon me I have a -- Don T is going to help me through voice part of this.

And the Committee scheduled this conference, I

1 think, as you pretty well know from reading the hearing
2 notice to determine parties readiness for our March 15th
3 hearing and to identify the remaining issues to be
4 resolved at that hearing, and if luck would have it,
5 resolve an issue today two in advance of that hearing.

6 So I have begun the introductions so to speak by
7 introducing myself, and Commissioner Peterman. On my
8 immediate right is my interim advisor Susan Brown. Susan
9 was my advisor in the past. She's back as retired
10 annuitant because my principal advisor is on a month's
11 vacation somewhere deep in the Grand Canyon in a frigid
12 bath, I think right now. And in any event, and Susan is a
13 veteran of these kinds of situations, so she'll have no
14 trouble helping me.

15 And to Ms. Peterman's left is Eileen Allen, who
16 is alone to Commissioner Peterman. She's advisor to
17 Commissioner Weisenmiller, but she's been handling this
18 case. So she's going to help Commissioner Peterman with
19 the case.

20 And of course, Kourtney Vaccaro is our Hearing
21 Officer. And Jennifer Jennings is in the back of the
22 room. She's our Public Adviser. Welcome, Jennifer.

23 And -- excuse me -- oh, Lynn, of course is
24 our -- is Jennifer's trusted deputy. Lynn Sadler. So
25 welcome to the two of you. That cuts down the number of

1 public in the audience to perhaps one and perhaps none.

2 So with that, I would like to ask the parties now
3 to introduced themselves and we'll start with the
4 applicant.

5 MR. LAMBERG: Thank you, Commissioner Boyd. This
6 is Greg Lamberg, representing the applicant for the Oakley
7 Generating Station. Specifically, the applicant the
8 Contra Costa Generating Station, LLC.

9 On behalf of the applicant, I would like to give
10 a warm welcome to Commissioner Peterman. Welcome aboard.
11 Congratulations. And we're very much looking forward to
12 working with you. Listen to your advisor. You've got a
13 good one.

14 To my left is Scott Galati, representing the law
15 firm of Galati Blek. He is counsel for Contra Costa
16 Generating Station, LLC.

17 To his immediate left is Doug Davies, who is our
18 AFC project manager with the firm CH2MHill.

19 To Doug's immediate left is Jim McLucas principal
20 with Contra Costa Generating Station, LLC.

21 And seated to Jim's left is Keith McGregor, who
22 is serving as our deputy project manager with CH2MHill.

23 Thank you.

24 PRESIDING MEMBER BOYD: Thank you. Seeing Keith
25 out there, I knew there was no public left.

1 How about staff?

2 SENIOR STAFF COUNSEL BELL: Thank you,
3 Commissioner Boyd. And welcome Commissioner Peterman. My
4 name is Kevin Bell, senior staff counsel, representing
5 staff in this project. With me is project manager Pierre
6 Martinez. I'm sorry. I don't have a larger cast of
7 characters.

8 (Laughter.)

9 PRESIDING MEMBER BOYD: We understand. Thank
10 you.

11 Now, I'm going to turn to the phone, because our
12 intervenor, Mr. Robert Sarvey, I am told is on the phone.
13 Are you there, Mr. Sarvey?

14 MR. SARVEY: Yes, Commissioner Boyd. I'm here.
15 My telephone connection is awful, but I'm trying to sort
16 through it and listen to what's going on. But, yes, I am
17 here.

18 PRESIDING MEMBER BOYD: Okay. Thank you.

19 Now, do we have interested agencies also. I
20 think I was told the Bay Area Air Quality Management
21 District has a representative on the phone.

22 MS. TRUESDELL: Yes. Kathleen Truesdell is here
23 from the Air District.

24 PRESIDING MEMBER BOYD: Thank you. Now, I'm just
25 going to go down the list. Is there anyone from the city

1 of Oakley?

2 MS. WILLIS: Yes. This is Rebecca Willis,
3 representing City of Oakley.

4 PRESIDING MEMBER BOYD: Thank you very much.

5 City of Antioch?

6 Contra Costa County?

7 I, too, hear the phone system crackling away.

8 U.S. Fish and Wildlife Service?

9 California Department of Fish and Game?

10 Anyone else out there who I have failed to call
11 upon who wants to identify themselves for purposes of the
12 record?

13 HEARING OFFICER VACCARO: I think Ms. Jones and
14 Ms. Parrish, if she's still on the line for representing
15 PG&E.

16 MS. JONES: Yes, we're here.

17 HEARING OFFICER VACCARO: Okay thank you.

18 PRESIDING MEMBER BOYD: Would you like to give us
19 your full names?

20 MS. JONES: We did its Kathy Jones and Danae
21 Parrish.

22 PRESIDING MEMBER BOYD: Thank you.

23 MS. JONES: You're welcome.

24 PRESIDING MEMBER BOYD: Hearing nothing else, and
25 assuming there are no others, I will now turn the conduct

1 of this hearing over to our hearing officer, Ms. Vaccaro
2 if you would, please.

3 HEARING OFFICER VACCARO: Thank you. I apologize
4 for my voice. You're just going to have to bear with me a
5 little bit today. So I think I might make what's already
6 a poor sound system slightly worse.

7 I think everybody understands we're really at a
8 point in this process where we need to move quickly and we
9 are moving quickly. I think a threshold issue for moving
10 forward to what everyone knows is a scheduled March 15
11 hearing that will take place in the City of Oakley. We
12 have a back-up hearing date, as everyone is aware, of
13 March 25th.

14 As we moved forward to those hearings dates, it's
15 important that we have a Final Staff Assessment published.
16 That's important so that we have the requisite time
17 periods between the publication of the document and the
18 start of the hearings, and also so that we continue to
19 move forward to a May 18 Commission business meeting for
20 presentation of a PMPD. It's important that we keep
21 everything on schedule.

22 It's my understanding -- and I'm going to start
23 with staff, but then we'll do the question and answer
24 starting with applicant after this. It's my understanding
25 that that -- almost all of it, with one tiny exception, is

1 going to be published today, is that correct? We'll see a
2 Final Staff Assessment today?

3 SENIOR STAFF COUNSEL BELL: Thank you, Ms.
4 Vaccaro. Yes, the Final Staff Assessment is being
5 published as we speak. In fact, the reason why Mr.
6 Martinez and our BlackBerries out is we're waiting for
7 them to buzz. It should be posted momentarily, within the
8 hour.

9 As you know, staff has been working diligently to
10 get to this point, since the AFC was submitted. And I can
11 tell you that Mr. Martinez has done a fantastic job of
12 keeping the wagon moving forward. So you have my
13 assurance that as we speak it is being published.

14 HEARING OFFICER VACCARO: Okay. And is it also
15 correct that what we'll have is a complete document with
16 the exception of Appendix A to transmission system
17 engineering?

18 SENIOR STAFF COUNSEL BELL: That's correct.

19 HEARING OFFICER VACCARO: Okay. And why don't
20 you, for the benefit of everybody, so that we all
21 understand the same thing the same way, why don't you give
22 us a sense of why it is that that section is trailing and
23 when it is that we might see that section?

24 PROJECT MANAGER MARTINEZ: Just for the record,
25 Pierre Martinez, project manager for the Oakley Generating

1 Station project, representing the Energy Commission.

2 Appendix A to the transmission system engineering
3 chapter is a informational document for most part. It's a
4 reconnaissance level, environmental document that
5 contemplates the reasonably foreseeable impacts for
6 reconductoring beyond the first point of interconnection.

7 The transmission system engineering section
8 itself evaluates transmission lines to the first point of
9 interconnection, and that is included in the FSA. It's
10 anticipated published very shortly today.

11 However, late in the year, just before the end of
12 the year, we got a Phase 2 cluster study, which basically
13 evaluates the anticipated impacts to lines beyond the
14 first point of interconnection. And it was discovered
15 that there were in fact were going to be some impacts.
16 And so we need to ask the applicant to provide us
17 additional information. And a data request was sent out
18 in mid to late January asking for information on
19 approximately 40 miles of transmission lines.

20 So it was a big request. And the applicant
21 turned around very quickly, I might add, quite a bit of
22 information that we are currently evaluating, and that is
23 the information that we'll rely on to prepare the Appendix
24 A for the transmission system engineering section. And
25 again, it will include a reconnaissance level or

1 screening level environmental analysis of those lines
2 beyond the first point of interconnection.

3 I might add that because a second hearing or
4 back-up date of March 25th is on the calendar, March 11th
5 would be the latest date that we could public that
6 document and we look forward to meeting or beating that
7 date, but our focus in the last couple weeks was obviously
8 to get the FSA published.

9 We'll now turn our attention to the Appendix A
10 and I will add that our staff has for the most part
11 reviewed the information and provided me their feedback
12 already. I just haven't had an opportunity to evaluate
13 it. And you know put it altogether. But I feel confident
14 as least as I tell you today, that we'll be able to meet
15 that deadline and be prepared for March 25th to discuss
16 that and then continue meeting the timelines that we have
17 already set for this project.

18 PRESIDING MEMBER BOYD: Could I ask who's the
19 owner of the transmission line in question?

20 PROJECT MANAGER MARTINEZ: You know, I don't know
21 the answer to that, to be honest with you. Perhaps the
22 applicant.

23 MR. GALATI: Scott Galati on behalf of CCGS.

24 Yeah, the system that we're interconnecting is
25 PG&E's. And so it will be PG&E's line, and it will be

1 permitted for any changes to it through the California
2 Public Utilities Commission.

3 PRESIDING MEMBER BOYD: Thank you.

4 HEARING OFFICER VACCARO: Thank you, Mr. Bell and
5 Mr. Martinez. It's helpful. So it looks as though then
6 we really still are on track and we're all looking forward
7 to getting the Emails from you and from dockets today
8 letting us know that that's in fact published.

9 I think with that, we'll turn to the topic of
10 issues. And I frame it in as we sit here today, because
11 everyone has already seen the notice and order with
12 respect to the hearing that tasks each party to prepare a
13 prehearing conference statement, and the order identifies
14 every element that needs to be in that prehearing
15 conference statement.

16 Chief among them are what are the issues -- which
17 areas are still at issue? Which aren't going to be at
18 issue? And if there are areas where there's going to be
19 cross-examination, identify the area and briefly describe
20 sort of what the nature of the cross is going to be.

21 As we sit here today, which is not the same as
22 where we're going to sit after this FSA is published or at
23 least not necessarily, from the applicant's perspective,
24 from staff's perspective, and from Mr. Sarvey's
25 perspective, very briefly identify the topic areas that

1 may be in dispute and just briefly summarize what that
2 dispute is.

3 This doesn't look you into a position, because of
4 course we're expecting to see this in the prehearing
5 conference statement. But I do want to underscore at this
6 point, and this is for the benefit of each party, we're
7 moving swiftly. We're trying to move efficiently. But no
8 matter what, we must be thorough. And in order to be
9 thorough, it's important that these things are put forward
10 in the prehearing conference statement. That's really
11 going to be a map and an operative document.

12 So again, tell us what you know today. But what
13 you really want for us to know and what we need to know
14 and what's going to be the road map for the evidentiary
15 hearing is going to be the opening testimony in the
16 prehearing conference statements. So everyone, please
17 take those documents seriously and we expect to see
18 prehearing conference statements from everyone.

19 So with that said, starting with the applicant,
20 give us a sense only the matters that you believe may be
21 an issue and why they're an issue.

22 MR. GALATI: One real brief introduction. And
23 that is that we had a fantastic Preliminary Staff
24 Assessment workshop with staff, where we resolved a lot of
25 issues. And because of that, I anticipate, from the

1 applicant's perspective, that there are only three
2 potential areas that we would ask for live witnesses. The
3 rest would be all on declaration, because we're in
4 agreement with the Staff Assessment.

5 Now, we know that those areas where we're in
6 agreement and there weren't any comments filed by anybody
7 else, that we anticipate the Final Staff Assessment will
8 look exactly like the Preliminary Staff Assessment, with
9 some of the minor corrections that we've spoken to.

10 So I think process is working exactly as it
11 should. Those areas are soil and water. There's two
12 subareas of soil and water. One is staff in the
13 Preliminary Staff Assessment had a Condition of
14 Certification requiring us to build and interconnect for
15 recycled water within a time certain. We proposed, after
16 the workshop, a condition that outlined the conditions
17 under -- that needed to happen for us to connect. Because
18 the project was dry cooled, where again, it's a dry cool
19 project, we're only talking about that small amount of
20 water. That's issues number one.

21 I haven't seen the Final Staff Assessment. Maybe
22 staff agreed with what we proposed.

23 Issue number two, again in soil and water, it's
24 cross over from biology. And that is there is a Wetland E
25 that is on the property site, that is already a CDFG

1 conservation easement. We will be taking our stormwater
2 to that particular Wetland E in consultation with Fish and
3 Wildlife -- excuse me Fish and Game. We have an agreement
4 with how that wetlands should be treated.

5 And there's always a -- two ways to look at it.
6 One from a stormwater perspective and one from a biology
7 perspective. At the workshop, staff -- biologist staff
8 and soil and water staff agreed to work together to try to
9 make the compliance with how that is monitored and worked
10 streamlined. There might be some questions we have or
11 some proposals we have once we see that that we might be
12 in conflict. Again, very minor issue.

13 The last issue is on noise. We had some
14 discussions about a particular noise limit, where we have
15 presented information to staff. All the mitigation we
16 have incorporated. We have asked for an increase in the
17 noise limit at one locations. We're waiting for the final
18 staff assessment. We might have a dispute to adjudicate.

19 Those are the areas.

20 We had good conversations with staff and are
21 all -- I think we're in agreement in concept on one
22 particular condition for air quality. But we present
23 language and we're waiting for staff's reaction to that
24 language. So if we have a dispute, it's probably on
25 language and not on the substance of how the project

1 has -- fulfills its CEQA obligations in air quality.

2 So that's pretty good, considering that there's,
3 you know, hundreds of conditions and we're talking about
4 four. I anticipate from our perspective I can put on my
5 entire case both direct and cross-examination in less than
6 two hours.

7 So that's where I believe that we are for the
8 evidentiary hearings.

9 I would like to address the Appendix A. Appendix
10 A would not change a single finding nor condition that the
11 Energy Commission would impose on the applicant. So I
12 think the parties could stipulate that that could come in.
13 That's evidence when published without the need for an
14 additional evidentiary hearing, because it's not change to
15 change any substance. It's informational. The Commission
16 could read that and decide they don't want to approve the
17 project for it. They really couldn't read that and decide
18 to change the conditions, because it's over areas which
19 the Commission doesn't permit. It's recommendations to
20 the Public Utilities Commission basically.

21 So I'd ask the Commission to consider that.
22 Again, I don't want us to have another evidentiary hearing
23 if one is not necessary.

24 HEARING OFFICER VACCARO: Thank you. That was
25 brief. It was.

1 Okay. We'll hear next from staff, and then we'll
2 hear from intervenors. Mr. Bell.

3 SENIOR STAFF COUNSEL BELL: Thank you. I'll
4 start with Appendix A as well. I do have to stress that
5 staff acknowledges that there are limits to our licensing
6 jurisdiction. And the limit as to what we can condition
7 in our license ends at the first point of interconnection.

8 However, that the information that's going to be
9 contained in Appendix A is required, so that staff and the
10 Commission can consider the whole of the action, even
11 beyond that first point of interconnection.

12 As Mr. Galati said, this is informational only.
13 It does not affect any conditions that the Commission
14 would be imposing. And we agree with Mr. Galati that
15 holding a separate evidentiary hearing may not be
16 necessary. It may suffice just to leave the record open
17 for the submission of Appendix A, so that it can be
18 considered by the Committee and by the Commission in their
19 decision.

20 Turning to the issues that are outstanding. I
21 note that there was some disagreement with respect to
22 wetlands and noise. Staff sees the only issue, and it is
23 a small one, is that with respect to water use. We
24 appreciate that the applicant in this matter has proposed
25 a dry cool facility that would use small amount of water

1 compared to some other facilities that we've licensed.

2 However, staff feels strongly that the applicant
3 can do a little more, either from at some point in the
4 future converting to recycled water, which if I remember
5 correctly, they had committed to doing at some point when
6 they initially submitted their AFC, but without a date
7 certain to do that. Or if the applicant would like to
8 propose a water conservation plan in lieu of converting to
9 recycled water, that's something that staff would consider
10 to be sufficient as well.

11 Staff does see this as the only real meaty issue
12 that the Committee would be hearing in this matter. I
13 anticipate the staff's entire case would take -- including
14 cross-examination, if any, would take no more than an
15 hour. Staff is anticipating that the vast majority of our
16 testimony would be based on our submittals not live
17 testimony itself.

18 However, staff will make available any witnesses
19 that the applicant or Mr. Sarvey wished to cross-examine
20 on those areas where we have disagreement.

21 HEARING OFFICER VACCARO: Thank you. Intervene
22 or Sarvey, can you hear me?

23 MR. SARVEY: Yeah, I can hear you.

24 HEARING OFFICER VACCARO: We hear you fairly
25 well. But if there's anyway you can get either get closer

1 to the phone or speak up just a bit, it would be helpful.
2 And at this time, we'd like to hear from you. Again
3 you're not locked in to whatever it is you say today.
4 Really, it's that prehearing conference statement that's
5 going to give us a true idea of what the issues are from
6 your perspective. But as you sit here today, we think it
7 would be very important to also hear from you what you
8 believe the issues are that we're going to need to
9 address in the course of evidentiary hearings.

10 MR. SARVEY: Without seeing the FSA, it's a
11 little preliminary, but what I've flagged from the initial
12 estimates of A and B, I see alternatives is definitely an
13 important topic. Environmental Justice, air quality,
14 biology, and I'll have to wait to see the FSA to decide on
15 some of these other issues. But those preliminary are the
16 ones that I see are issues.

17 And I don't really have an estimate of any type
18 of time for a presentation or cross-examination, but I'll
19 probably know a little more after I review this FSA and
20 the Appendix A from the transmission system engineering.
21 I may have some issues with that as well.

22 HEARING OFFICER VACCARO: Okay. You know, Fair
23 enough. I think you're in the same position that the
24 Committee and everyone else is in, in that we haven't yet
25 seen the Final Staff Assessment. But what I do know, is

1 that we have all had the opportunity to see the
2 Application for Certification. We've had the opportunity
3 to see all of the comments that have been filed and
4 docketed and we've also had the opportunity to review PSA
5 parts A and B.

6 And based your review right now, you've indicated
7 that there are four areas alternatives, Environmental
8 Justice, air quality and biological resources that give
9 you some level of concern.

10 I think what we really need to hear is not just
11 the topical area, but if you could please, for the benefit
12 of everybody, just give us a sense of what it might be
13 about biological resources that gives you some concern,
14 where the air quality issue might be, what's left to be
15 answered as opposed to wholesale identifying a large
16 topical area as being an issue of concern.

17 So if that's something that you're able and
18 willing to do, I think it would be beneficial for all of
19 us, because that's what's going to allow us to move
20 forward in an organized fashion, so that we can be
21 efficient but more importantly so that we can be thorough.

22 So I know that you're well versed in reading our
23 documents here at the Commission and reading the
24 applicant's documents. So I'd like you to take a stab at
25 giving us some greater detail.

1 MR. SARVEY: Well I'll give you some preliminary
2 detail, but I have to admit that I have been busy with is
3 it Mariposa energy project and have not gotten to review
4 things as thoroughly as I normally do. But once the FSA
5 comes out, I will certainly give -- know a lot more.

6 But in alternatives, the no project alternative
7 would be my issue in alternatives.

8 In water, I have concerns about the -- using
9 fresh water for three years for the project. I don't
10 think that meets the LORS.

11 Noise, I heard Mr. Galati mention that. And I
12 don't know what that issue is, so I'll reserve anything on
13 that.

14 And biology, of course, it's the nitrogen
15 deposition to the dunes preserve over there and the
16 metalmark butterfly. So that's definitely one of my major
17 issues.

18 Environmental Justice. I don't believe that you
19 have an accurate census and that you can determine that
20 the project -- this area is not in eye minority community.

21 And then air quality is going to be PM2.5
22 emissions. Some of the mitigation and also ammonia
23 emissions will be primarily in my discussion.

24 HEARING OFFICER VACCARO: Okay, that was
25 extremely helpful. Thank you. I do want to pursue the

1 issue of alternatives and the no project alternative just
2 a bit further.

3 Is this sort of a -- what exactly is the concern
4 with, that you feel that the no project alternatives
5 analyses both in the AFC and the Staff Assessment don't go
6 far enough? Is there something that's missing? Is there
7 something that's not covered?

8 MR. SARVEY: Well, yeah, yeah. I would say they
9 don't go far enough. And they don't really analyze, you
10 know, whether the State of California would be better off
11 without this project. The focus seems to be on the
12 applicant's objectives. But the more important objectives
13 are the objectives of the State of California, and those
14 are the ones I'll be trying to bring into the evidentiary
15 hearing.

16 HEARING OFFICER VACCARO: Okay. Thank you. I
17 think that actually is really very helpful. So at this
18 point then, those are the only topical areas where you've
19 at least identified some concerns. And by the time of the
20 prehearing conference statement, you will have been able
21 to identify any additional topical areas, is that correct?

22 MR. SARVEY: Yes, that's correct. And as I had
23 stated earlier, I was hoping for a little more time to
24 file. It seems to have been kind of -- I haven't gotten
25 any response, but I see that you've issued a schedule.

1 It's kind of -- it ignored my concerns, but I understand.
2 And I'm a little bit -- I don't know. I'm a little
3 bit -- I don't know how to explain it to be rushing this
4 project so the applicant doesn't have to comply with the
5 federal greenhouse gas emissions requirements, to me seems
6 a little bit counterproductive to what the Energy
7 Commission should be doing.

8 The Energy Commission should be trying to get the
9 most stringent greenhouse gas standards available to make
10 sure it meets all the federal standards. And I feel a
11 little bit uncomfortable rushing a project to get somebody
12 out of complying with federal requirements.

13 HEARING OFFICER VACCARO: Okay. Thank you for
14 sharing your concerns. And one point of clarification
15 though, that I would like to make, Mr. Sarvey, is I think
16 it is unfortunate if you believe that your concerns were
17 ignored, because I think contrary to maybe the wishes of
18 other parties, the Committee did recognize the challenges
19 that are posed by your participation in both this case and
20 the Mariposa case, and purposefully added a second hearing
21 date in this matter.

22 MR. SARVEY: I appreciate that. I appreciate
23 that. Thank you.

24 HEARING OFFICER VACCARO: So we are hearing you
25 and recognizing some of the things you're saying. And to

1 the extent that the Committee can respond appropriately,
2 the Committee is attempting to do so.

3 MR. SARVEY: Okay. Well, I withdraw what I said
4 about the -- about my concerns. But I appreciate the
5 Committee listening and scheduling a possible additional
6 day for that. Thank you.

7 HEARING OFFICER VACCARO: You're welcome.

8 I think now that we have a sense of what the
9 issues might be, from your perspective, I think I'll share
10 with you, and Commissioner Boyd will certainly or Vice
11 Chair Boyd will certainly correct me where I misstated,
12 some of the areas that the Committee is interested in
13 hearing a bit more about at the hearing.

14 Again, we are in advance of a prehearing
15 conference date. We're at a status conference where none
16 of us have the benefit of the Final Staff Assessment. So
17 what the Committee knows as of today is based on what's
18 been submitted.

19 So here are some of the areas where we would like
20 each of the parties to have witnesses available to answer
21 committee questions. That doesn't mean that you weren't
22 going to make them available for cross anyhow, but now
23 you know that the Committee wants them there. So please
24 make sure people are there on the following topics.

25 The first has to do with the water supply and

1 impacts. I think we've heard what you've had to say today
2 and we've had the benefit of taking a look at some of the
3 information that's been submitted, and think that it would
4 be important to hear a bit more about the economic and
5 technical feasibility of the project using the recycled
6 water as proposed by staff.

7 We're also interested in hearing a bit more truly
8 about the water supply impacts and short-term and long
9 term water availability of water coming from the Diablo
10 Water District. What we've seen so far in the record is
11 there is a report of the water district that's been
12 referred to; it's been referenced as a source of
13 information, but I think it's important that some more
14 reconciliation is done between what's being stated by the
15 applicant, the staff, and Diablo Water District with
16 respect to water supply, availability of water, and
17 potential impacts on other users.

18 The other area I think that's important for the
19 Committee to just get a better understanding of
20 clarification-wise, is understanding how the East Contra
21 Costa Habitat Conservation Plan and the Natural Community
22 Conservation Plan truly applied to this project.

23 I think it's been explained to some extent but
24 what we've also seen in the papers is that there's a
25 matter that's going to be presented before the Conservancy

1 for approval. We don't know the timing of that, what the
2 impacts of that are for this project, how and whether it
3 impacts the estimated figures that have been presented in
4 the Staff Assessment, in the subsequent filing by the
5 applicant, what the mitigation figures are, and whether or
6 not the Conservancy is actually in agreement with that
7 information.

8 That's something that needs to be further fleshed
9 out and presented to the Committee. That can be done of
10 course orally, in writing, both, but certainly expect some
11 questions from the Committee on that particular topic.

12 And for those of you who are used to me at this
13 point, when it comes to air quality, we always like to
14 have a representative of the air quality management
15 district present to sponsor the FDOC and to confirm that
16 there are no changes, and also to possibly answer
17 committee questions.

18 So I guess I ask you, Ms. Truesdell, would you be
19 able to make someone available on behalf of the district
20 at the March 15 hearing either in person or on the
21 telephone to answer questions of the Committee and sponsor
22 the FDOC?

23 MS. TRUESDELL: Yes, I will be there.

24 HEARING OFFICER VACCARO: Great. Thank you.

25 I think, with that, I'll ask Vice Chair Boyd if

1 there are any other topics or questions that you want us
2 to cover today?

3 PRESIDING MEMBER BOYD: No I don't have anymore
4 in light of the substantial list of other subjects that
5 have been added to the list. Anything I might have
6 thought of has now been put before the body. So I have
7 nothing more. Thank you.

8 HEARING OFFICER VACCARO: Eileen, is there
9 anything that you want to ask about?

10 I think before we turn to public comment, we'll
11 just do one last sort of round robin in terms of any final
12 questions or comments starting with the applicant, we'll
13 move to staff and then we'll move to intervene or Sarvey
14 and then we'll go ahead and find out if we have people on
15 the phone or in person who might want to make a public
16 comment.

17 Mr. Galati?

18 MR. GALATI: Based on what I heard today, I think
19 we can answer all of those questions in writing and
20 certainly provide a witness with respect until I see the
21 intervenor's opening testimony, I won't know on exactly
22 how much rebuttal I need. But I'd like to -- I don't
23 think that this adds more than an hour to my presentation
24 to be able to handle these things, including the
25 intervenor testimony.

1 I did want to address one thing that was said,
2 but I want to be very careful. I don't believe anybody's
3 rushing to make sure we don't meet the greenhouse gas
4 emissions standards requirements. The project was filed
5 for -- you know it's been lingering because of the
6 renewable energy projects for quite some time. The
7 grandfathering provision that allowed projects that were
8 already filed and made substantial investments with design
9 and everything else to not have to start over and get a
10 federal permit.

11 Staff has evaluated greenhouse gas emissions
12 extremely thoroughly. So has the applicant and we believe
13 employing the BACT for greenhouse gas emissions now. But
14 I didn't want to leave the impression hanging there that
15 the committee was rushing to avoid compliance with a law.
16 That is not what the applicant has requested nor is it our
17 perception that that's what the Committee is doing.

18 HEARING OFFICER VACCARO: Mr. Bell.

19 SENIOR STAFF COUNSEL BELL: Again, I find myself
20 echoing Mr. Galati here. With respect to whether or not
21 the Committee or staff or anybody has rushed this project,
22 I would note that the project -- the AFC was filed in June
23 of 2009. We have a 12-month licensing process that would
24 take us to -- well that would have been June 2010. We're
25 now almost coming up on two years after the AFC was filed,

1 so I don't think that this project is being rushed.

2 I do note that the project received a lower
3 priority because of some of the renewable large scale
4 solar projects that the Commission was licensing. And
5 this project did not move forward as quickly as it could
6 have. So I do believe the staff has prioritized this
7 project appropriately at this stage. And I think the
8 Committee has as well. I see no rush here.

9 As the Committee concerns for these different
10 areas with I understand water supply and impacts, watt
11 area availability and also with respect to the application
12 of that conservation plan of this project, staff believes
13 that the FSA should answer the Committee's questions. But
14 if in the event that it doesn't, we will have the
15 appropriate staff available to answer the questions from
16 the Committee. Staff, of course, can't anticipate exactly
17 what those questions would be. And we're hoping that
18 after reading the FSA that there will be no questions, but
19 we'll ensure that staff is available at the hearing.

20 Also, I don't see that as extending out staff's
21 time to present its case as all.

22 HEARING OFFICER VACCARO: Thank you.

23 Mr. Sarvey.

24 MR. SARVEY: Well, yeah, I think record speaks
25 for itself on why we're in a hurry, but you also need the

1 understand that this project is morphed about four times
2 in the last two years. And there's a lot of different air
3 quality emission limits discussed. And you know -- but we
4 don't need to get into that. We can get into that later.

5 I have a lot of concerns about the project and a
6 lot -- most of them are related to the fact that it sits
7 next to the Gateway Project, which has no PSD permit and
8 it's still operating.

9 We got a new Marsh Landing Facility coming in.
10 Until that gets there, we're going to have the Contra
11 Costa 6 and 7 project. I think there's a large cumulative
12 impact to this population. And I'm not sure that we
13 should be getting in too big a hurry here. And I think we
14 need to look real closely at the air quality impacts, and
15 also the impacts to biological resources.

16 There's about 50 butterflies left from a
17 population of a couple a thousand a few years ago. So I
18 think we need to take our time and make sure we properly
19 mitigate this project, if it is to be approved at all.
20 And I have full confidence Commissioner Boyd will do that.

21 So I want to thank Commissioner Boyd and Hearing
22 Officer for scheduling that last day just in case. And I
23 appreciate everything you've done so far.

24 Thank you.

25 HEARING OFFICER VACCARO: Thank you for your

1 comments. I think with that, what we'll do is turn to
2 public comment.

3 Okay we'll start with those folks that are here
4 in the room. I see one individual with a visitor badge.
5 Would you like the make a comment?

6 Okay, if you could please come to the microphone
7 and when you do, if would you please state your first name
8 and your last name and let us know if you're affiliated
9 with any type of organization or if you're a member of the
10 public making a comment thank you.

11 MS. VANG: Hi. My name is Maifiny Vang from the
12 California Department of Water Resources, State Water
13 Project Power and Risk Office.

14 I'd like to first thank the Commission for
15 holding this hearing and allowing comments and also the
16 applicant for enduring this phase of the certification
17 process. I'm sure it's not easy.

18 The State Water Project serves over two-thirds of
19 Californians with water. The Department submitted formal
20 comments in response to the PSA and I'm here to -- on
21 behalf of the Department to reiterate the importance and
22 the concerns that were expressed. And also to seek early
23 support from the Commission staff and the applicant.

24 I'd like everyone to refer to specifically to the
25 letter that the Department sent February 14 expressing

1 their concerns and also some preliminary recommendations
2 for the Commission staff and for the FSA.

3 The Department has an ongoing mission to provide
4 power to the State Water Project facilities in a reliable
5 and economic manner. In relation to the OGS project, the
6 Department's Harvey O. Banks is critically situated as the
7 gateway to the California Aqueduct, and including the
8 South Bay Aqueduct serving customers in Santa Clara and
9 Alameda counties.

10 Harvey O. Banks is looped into the Contra Costa
11 Tesla 230 kV line. In addition, there's other air loads,
12 includes the Department's South Bay and Skinner Fish
13 Facility. The combined load is just under
14 300 -- estimated to be under 300 megawatts. That's an
15 important number, because in 2011, this year, the
16 Department is planning to serve both South Bay and Skinner
17 through the Banks interconnection. So you have 300
18 megawatts of load that we need to be reliable.

19 Department cannot sustain reduced water
20 deliveries, whether that's caused via outages or
21 operational procedures, on either Contra Costa to Delta
22 pumps line or the Delta pumps line to the Tesla line or a
23 combined forced or planned outages related to the OGS
24 during construction and also post project.

25 We're looking at doing preliminary protection

1 analysis and we would like -- we need some information
2 ahead of time, so that we can do our relay coordination
3 review and any other changes that are required.

4 So the existence of conditions that are placed
5 upon transmission service create circumstances into which
6 the Department cannot have sufficient confidence in its
7 ability to pump water off Banks whenever practical.

8 Also, Banks and the State Water Project is part
9 of a larger plan in the Bay-Delta to ensure and promote
10 the ecosystem. That would include water quality and
11 minimizing impacts on endangered species. So this is
12 a -- the impact is more than just transmission
13 engineering. There's environmental impacts there too.

14 So in close, I'd like to add that the Department
15 is more than willing to work with the applicant and its
16 project planners to ensure that not only State Water
17 Project pumpings is protect and not harmed, but that both
18 the system and load electric reliability can be
19 coordinated early and before construction.

20 So again, thanks for hearing the comments and I
21 hope you can consider this in the FSA.

22 HEARING OFFICER VACCARO: Okay. Ms. Vang, thank
23 you very much. In fact, the Committee is aware that two
24 come in. One in the form of an Email from you --

25 MS. VANG: Right.

1 HEARING OFFICER VACCARO: -- and also the letter
2 that you referenced. And they were timely submissions to
3 the Staff Assessment, which means that the staff in some
4 fashion has taken those comments into consideration, has
5 evaluated them and has reached some determination and a
6 recommendation with respect to those.

7 MS. VANG: Okay.

8 HEARING OFFICER VACCARO: So I think we will all
9 await the publication of the FSA this afternoon to see how
10 those comments been addressed by staff. That certainly
11 doesn't preclude you in any way from communicating with
12 the applicant if there's anything further that you think
13 you need to discuss with the applicant. But I think we
14 all look forward to seeing what the response might be to
15 those comments. But I don't believe this is the forum for
16 us to actually to go back and forth, but I think now
17 we've -- we're aware both orally and in writing of your
18 agency's concerns.

19 MS. VANG: Thank you.

20 HEARING OFFICER VACCARO: Thank you.

21 PRESIDING MEMBER BOYD: Yeah. Thank you for
22 being here. And I am anticipating in looking forward to
23 the staff's comments on your concerns and I would just add
24 for your benefit as an eight year veteran of the
25 Department of Water Resources way back when they built the

1 bloody project, kind of a vested interest in the outcome
2 myself. So thank you.

3 HEARING OFFICER VACCARO: Any individuals on the
4 phone line, members of the public or representatives of
5 agencies who have any comment that they might wish to make
6 with respect to today's proceedings or the Staff
7 Assessment?

8 Okay. Hearing none, think I think we'll move
9 forward with having the Vice Chair adjourn the status
10 conference. Thank you, everybody for coming prepared and
11 making this smooth and productive.

12 PRESIDING MEMBER BOYD: Well, thank you all for
13 being here. It's nice to reacquaint myself with this
14 project. There's been a eye hiatus as indicated, and
15 hopefully we can move forward. The issues will be
16 addressed appropriately by all and you all get resolution
17 of your issues.

18 And with that, thank you to our new commissioner
19 for being here and we'll see you at the hearing.

20 Thank you all. This meeting is adjourned.

21 (Thereupon the Energy Commission meeting
22 adjourned at 2:23 p.m.)
23
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25

1 CERTIFICATE OF REPORTER

2 I, PETER PETTY, an Electronic Reporter, do hereby
3 certify that I am a disinterested person herein; that I
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7 I further certify that I am not of counsel or attorney
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9 interested in outcome of said hearing.

10 IN WITNESS WHEREOF, I have hereunto set my hand this
11 4th day of March, 2011.

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